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SUBJECT: Argentina: Playing the Judicial Blame Game

REF: (A) BUENOS AIRES 0381 (B) BUENOS AIRES 0056 (C) BUENOS AIRES  
0219

11. (SBU) Summary: President Cristina Fernandez de Kirchner (CFK) set off a political firestorm between the executive, legislative, and judicial branches on who is to blame for Argentina's increasingly dysfunctional judicial system. The courts have long been plagued by an overwhelming demand for judicial services, 100-plus vacant judgeships, inadequate administrative and budgetary support, and obsolete technology and infrastructure. The finger-pointing about judicial ineffectiveness takes place as the public grows increasingly anxious about crime, the top concern of voters according to most polls. Judicial officials argue that the court system's problems require an executive and a legislative fix. After days of public squabbling, CFK's Cabinet Chief met with the Supreme Court to iron out differences. The GOA subsequently stated that it would hire additional judicial personnel, and the Court announced that it would modernize its information technology infrastructure and create a trilateral Commission focused on expediting trials stemming from the 1970s "Dirty War." Although the Supreme Court has an ambitious plan to make the judiciary more effective, to date CFK has demonstrated little sustained interest in pressing for judicial reform beyond calling for hasty adjudication of Dirty War trials. End Summary.

CFK Calls for Expedited HR Trials...Again  
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12. (SBU) President Cristina Fernandez de Kirchner's (CFK) renewed call for expedited court proceedings in human rights trials against former officials of the 1976-83 military dictatorship recently set off a firestorm between the executive, legislative and judicial branches with each side blaming the other for the snail-like pace of Argentina's administration of justice. CFK used her March 1 State of the Nation address to Congress (Ref C) to reiterate her administration's commitment to pursue justice for the human rights abuses that were committed during the Dirty War era, and asserted that "the Executive and the Legislative branches have done their part. It is now time for the Judiciary to act, as justice has been delayed far too long."

13. (SBU) CFK has frequently called on the courts to speed up trials from the "Dirty War-era." Judicial officials argue, however, that the judicial system's problems require an executive and a legislative fix, as the timely and effective delivery of justice has long been hampered by overwhelming demand for judicial services, 100-plus vacant judgeships, inadequate administrative and budgetary support, and obsolete technology and infrastructure. For years, human rights organizations have urged the three branches of government to meet to develop and implement measures that could improve the court's efficiency.

Supreme Court: Get us More Money, More Judges  
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14. (SBU) The Supreme Court on March 3 called for a meeting between all branches of the federal government to resolve the issue. On March 5, Supreme Court Justice Carmen Argibay pointedly remarked that CFK was "perfectly aware of the court's poor budget situation."

She urged the Executive branch to speed up judicial nominations fill vacancies on the federal bench (currently over 140), and she added that all cases before the court, not just human rights cases, needed timely decisions. Justice Carlos Fayt immediately backed Argibay, calling her "a responsible judge" who is "just presenting a status report" on the court's current challenges. He also stressed that these issues must be solved by the executive and legislative branches.

#### The Blame Game

15. (SBU) It did not take long for CFK and her allies to respond to Argibay's objections. The next day, CFK argued that "Argentines simply need justice." She blamed the judiciary for "the release of dangerous detainees that later commit new crimes. Blame should not be placed on any other branch of government. The judiciary is the only branch that can prosecute and incarcerate criminals in a system with separation of powers." Justice Minister Anibal Fernandez asserted that the Supreme Court had never formally complained of budgetary constraints. He stressed that CFK was committed to improving judicial efficiency and noted that CFK had appointed 137 judges in 2008, a significant increase in the number of judges (29) that had been appointed in 2007. (Note: Official Council of Magistrates statistics, however, indicate that only 94 federal and national judges had been appointed.) Minister Fernandez reiterated CFK's complaints of inordinate judicial delay in prosecuting human rights repressors, and asked the Judiciary to "fix" the situation.

16. (SBU) CFK's Congressional allies also came to her defense. Deputy Diana Conti, a member of the Council of Magistrates, issued a statement telling Justice Argibay "to shut up and work harder." Deputy Agustin Rossi, head of the Kirchner-allied (FpV) bloc in the lower house, accused Argibay of "making excuses". Senator Miguel Angel Pichetto, head of the FpV bloc in the Senate, claimed that the Congress had done its part by passing a law in 2008 which "allows all cases to have a hearing before a permanent or substitute judge." (Note: The law was passed in response to a 2007 Supreme Court order requiring the Congress to develop a process to appoint temporary judges. Legal scholars, however, expressed concern that the law encourages delays in the selection of permanent judges and increases the executive branch's authority to appoint alternate or acting judges without public vetting. Due to the temporary nature of the positions, there were some criticisms in the press that interim judges were subject to political manipulation. Although the new law required the Executive branch to submit its nominations for temporary judges to the Senate, it still has not done so.)

17. (SBU) In an attempt to lower the temperature on the debate, Justice Fayt asserted that there was no conflict between the three branches of government, a statement to which Justice Minister Fernandez swiftly agreed. Supreme Court Vice-President Elena Highton de Nolasco subsequently declared that the spat with the CFK administration was over, but maintained that the Court was "in full agreement" with Justice Argibay's earlier statements.

#### Truce

18. (SBU) On March 11, CFK's Cabinet Chief Sergio Massa met with the Supreme Court at Chief Justice Ricardo Lorenzetti's request. After the meeting, Lorenzetti publicly stated that the courts would periodically report to the administration on their progress in trying human rights cases. The government, in turn, announced it would allocate AR\$36 million (US\$9.86 million) to hire approximately 750 new employees for the courts and upgrade the criminal justice system's information technology in an attempt to speed up trials.

19. (SBU) In a March 25 conversation with the Ambassador, however, Lorenzetti complained that the executive had not yet introduced a bill in the Congress authorizing the budget increase. Once the bill is passed, the Council of Magistrates, not the Supreme Court, would administer the funds. Although he expressed frustration with the slow pace of judicial reform, he noted positively that the Council would soon announce a public bid to overhaul the courts' technology infrastructure.

¶10. (SBU) On April 1, Lorenzetti announced the opening of bidding to upgrade the judiciary's IT system. He explained that the computerization of court records would increase judicial efficiency and would be the most important transformation of the judicial system in history. The Council's president, Luis Bunge Campos, explained that digitizing the court's case management system would "end the [bureaucratic] nightmare that is the judicial investigation" by expediting the judicial process and improving transparency. According to press reports, the data center is expected to be operational by 2010.

Supreme Court: We Will Not be Pressured

¶11. (SBU) On April 7, Lorenzetti announced the creation of a Commission for the Coordination and Streamlining of Crimes against Humanity Cases, which will include participation by representatives from the Supreme Court, the judiciary, the General Prosecutor's Office, the Council of Magistrates and the Legislative branch. The Commission will focus exclusively on developing measures to expedite Dirty War-era trials. During the presentation, Lorenzetti carefully avoided referring to CFK's repeated requests to speed up the trials and denied that the executive branch had pressured the Supreme Court to create the Commission. "No judge, much less the justices of the Supreme Court, can be pressured. We will not be pressured by anyone," he stated.

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Comment  
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¶12. (SBU) Although CFK set off the latest round of recrimination with her appeal to accelerate the prosecution of human rights violations committed by the 1976-83 military regime, the public is generally more concerned about addressing current violent street crime. In periodic demonstrations against growing insecurity in the greater Buenos Aires metropolitan area, public outrage is evident at the effective impunity afforded criminals by a dysfunctional judicial system. The legal framework is full of loopholes and internal contradictions, but police, prosecutors, and judges share the blame -- due to inadequate resources, training, corruption, or incompetence. Judges have broad discretion as to whether and how to pursue investigations, contributing to a public perception that many decisions are arbitrary - or influenced. In fact, a November 2008 survey conducted by an NGO, The Citizens' Trust in Justice, found that 85% of Argentines had a negative perception of the general behavior of judges, including their impartiality, reliability, honesty and reputation.

¶13. (SBU) To address this, the Supreme Court has embarked on an ambitious reform program to modernize the judiciary and improve the rule of law in Argentina. The current administration, legislative branch, and lower court officials, however, have shown mixed interest in supporting judicial reform, and the question remains whether the Supreme Court has the authority, not to mention the political support, to lead the way to an effective and independent judiciary. End Comment.

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